

KMcE
Acampo, CA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CONSTELLATION BRANDS,
U.S. OPERATIONS, INC.,
d/b/a WOODBRIDGE WINERY
Employer

and

Case 32-CA-148431
32-RC-135779

CANNERY, WAREHOUSEMEN,
FOOD PROCESSORS, DRIVERS AND
HELPERS, LOCAL UNION NO. 601,
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS
Petitioner

ORDER REMANDING

This test-of-certification proceeding is on remand to the National Labor Relations Board from the United States Court of Appeals for the Second Circuit. For the reasons explained below, the Board has decided in turn to remand this proceeding to the Regional Director for Region 32 for further processing, consistent with the court's opinion and this Order.

Constellation Brands (the Employer) produces wine for domestic and international distribution and bottles wine for other wineries at its facility located in Acampo, California. On September 2, 2014, Cannery, Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 601, International Brotherhood of Teamsters (the Petitioner) filed a petition seeking to represent a unit of all full-time and regular part-time general operators, master operators, senior operators, and working foremen employed by the Employer in the Employer's cellar operation at the Facility. Pursuant to a Decision and Direction of Election finding that the

petitioned-for unit was an appropriate unit under *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), enfd. sub nom. *Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013), an election was held on February 6, 2015.¹ The Tally of Ballots showed 31 for and 13 against the Petitioner, with zero determinative challenged ballots. On March 12, 2015, the Regional Director issued a Certification of Representative.²

On July 29, 2015, the Board granted the General Counsel's motion for summary judgment and found that the Employer violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Petitioner as the exclusive representative of all employees employed by the Employer in the appropriate unit. *Constellation Brands, U.S. Operations, Inc. d/b/a Woodbridge Winery*, 362 NLRB No. 151 (2015). The Employer refused to comply with the Board's Order and filed a petition for review with the United States Court of Appeals for the Second Circuit, and the Board filed a cross-application for enforcement.

On November 1, 2016, the court granted the Employer's petition for review, denied the Board's cross-application for enforcement, and remanded this proceeding to the Board. *Constellation Brands, U.S. Operations, Inc. v. NLRB*, 842 F.3d 784, 795 (2016). The Second Circuit approved the Board's use of the *Specialty Healthcare* framework, but remanded the case to the Board for the limited purpose of explaining whether, under step one of *Specialty Healthcare*, the excluded employees (particularly the barrel employees) have "meaningfully

¹ The Employer's request for review of the Regional Director's Decision and Direction of Election was denied on February 16, 2015.

² The certified unit consisted of "[a]ll full-time and regular part-time operator I, operator II, senior operator, and foremen employees working in the outside cellar department and employed by the Employer at its Acampo, California Facility, excluding all other employees, office clerical employees, temporary workers, employees working in the following departments: barrel, cellar services, recycling, wine info, facilities maintenance, engineering, bottling, bottling sanitation, bottling maintenance, quality control, laboratories, warehouse, and winemaking, guards, and managers and supervisors as defined in the Act."

distinct interests in the context of collective bargaining that outweigh similarities with unit members.” *Id.* at 795.

On February 21, 2017, the Board advised the parties that it had accepted the court’s remand and invited the parties to file statements of position. Subsequently, the Employer and the Petitioner each filed a timely statement of position. The Employer’s statement of petition included a request to remand the case for additional fact finding, and the Petitioner opposed that request.

On December 15, 2017, while the remand was pending at the Board, the Board issued *PCC Structurals*, 365 NLRB No. 160 (2017), which overruled *Specialty Healthcare* and reinstated the traditional community of interest standard as articulated in, e.g., *United Operations, Inc.*, 338 NLRB 123 (2002). In doing so, the Board drew in part on the Second Circuit decision in *Constellation Brands*. *PCC Structurals*, 365 NLRB No. 160, slip op. at 9-10, 11. The Board found that “[i]n weighing both the shared *and* the distinct interests of petitioned-for and excluded employees, we take guidance from *Constellation Brands*.” *Id.*, slip op. at 11 (emphasis in original). The Board agreed with the Second Circuit that it “must determine whether ‘excluded employees have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with unit members.’” *Id.*, quoting *Constellation Brands*, 842 F.3d at 794.

Following the issuance of *PCC Structurals*, on February 13, 2018, the Petitioner filed a supplemental statement of position contending that due to the change in applicable law, the “most expeditious and efficient way to resolve the certification question, both factually and legally” requires “[i]mmediate remand to the Regional Director for appropriate fact-finding and analysis” under *PCC Structurals*. The Petitioner contends that doing so will better effectuate the

policies and purposes of the Act, rather than deciding the case based on the existing record created under the *Specialty Healthcare* standard.

On February 20, 2018, the Employer filed a motion to dismiss this case, contending that the underlying unfair labor practice was based upon now overruled precedent and that the Board must therefore reconsider the case in accordance with *PCC Structural*s. The Employer claims that the evidence establishes that the petitioned-for employees do not share a community of interest sufficiently distinct from the interest of the excluded employees to warrant finding them to constitute an appropriate unit. On March 7, the Petitioner filed an opposition to the Employer's motion to dismiss.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

We find that the issue whether the petitioned-for unit is appropriate can best be resolved by remanding this proceeding to the Regional Director for further analysis in light of *PCC Structural*s, including reopening the record. In doing so, we note that 1) both parties agree that *PCC Structural*s is the correct standard to apply in this case; 2) the Petitioner has requested that the Board remand the case to the Regional Director to reopen the record in order to best evaluate the case under *PCC Structural*s; 3) although the Employer has filed a motion to dismiss, it also agrees that the unit determination must be revisited in some form; and 4) the Employer's original position in its statement of position, prior to its filing of the motion to dismiss, was that the case should be remanded. Under these circumstances, we find that remand is warranted in order to give the parties an opportunity to supplement the evidence in the record so that this case can be better evaluated under *PCC Structural*s. As such, the Employer's motion to dismiss is denied.

Accordingly, we reopen the record in Case 32-RC-135779 and remand that case to the Regional Director for Region 32 for further appropriate action consistent with this Order, including reopening the record and the issuance of a Supplemental Decision.³

ORDER

IT IS ORDERED that the record in Case 32-RC-135779 is reopened, and the case is remanded to the Regional Director for Region 32 for further consideration and to take additional evidence.

Dated, Washington, D.C., April 13, 2018.

Marvin E. Kaplan, Chairman

Lauren McFerran, Member

William J. Emanuel, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

³ Member McFerran concurs in the judgment to remand the case, observing that both parties agree that a remand is appropriate, and neither party contends that *Specialty Healthcare* should apply, either as the law of the case or because *PCC Structural*s was wrongly decided.